

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-31, all of which have been rejected. Claims 1, 11 and 20-30 have been amended to clarify the claim language. The Applicant points out that the amendments to the respective claims are supported at least in Figs. 3-4, and the related descriptions, such as ¶¶53-55 of the specification. The Applicant respectfully submits that the claims define patentable subject matter. Claims 1, 10-11 and 20-21 are rejected under 35 U.S.C. § 102(e) as being anticipated by USPP 2004/0039817 ("Lee"). Claims 2-9, 12-19 and 22-31 are rejected as being unpatentable over Lee in view of USP 7,058,040 ("Schmidt").

#### **I. Examiner's Response to Arguments**

With regard to the rejection of independent claim 1 under 102(e), the Applicant submits that Lee does not disclose or suggest at least the limitation of "determining by an access point, a protocol associated with a communication signal for said access point; allocating a processor within said access point, said processor compatible with said determined protocol; and processing said communication signal by said allocated processor within said access point," as recited in Applicant's claim

1.

The Office Action (page 7) states the following:

"At pages 11-12, with respect to claim 1, applicant argues that Lee fails to disclose "allocating a processor within the access point, the processor compatible with the determined protocol."

In reply, **Lee discloses the method of selecting AP based on the determined protocol** as shown in Figure 1 and described paragraph [0059]."

The Applicant points out that Lee ([0002] and [0009]) discloses an AP selection method by a wireless station. More specifically, Lee ([0057-0059]) discloses that **it is the wireless station** (and not an AP), which performs a matching (the alleged "determining") of one of its 802.11 protocol operating modes (the alleged "protocol associated with a communication signal") to an AP, prior to making a selection to join the AP. Lee simply does not disclose or suggest any further detail about the AP, other than how it is being selected by the wireless station. Therefore, contrary to the Examiner's allegation, **Lee does not disclose that an AP performs a protocol determination for itself**. Accordingly, Lee at least does not disclose or suggest "determining by an access point, a protocol associated with a communication signal for said access point," as recited in Applicant's claim 1.

The Office Action (page 7) also states the following:

"An access point (AP) is a land station or a mobile station carrying on a service for mobile stations and/or communicating with other APs. Without allocating a processor within the access point, the selected AP is not operable with mobile stations because a processor within AP communicates with a processor within mobile or hand-held phone. For example, in a wireless telephone system, the signals from one or more mobile telephones in an area are received at a nearby base station, which then connects the call to the land-line network. A processor in computer network is commonly use to refer to any hardware that is used for information processing, but not limited to hardware. Therefore, the selected AP/base station based on the determined protocol inherently includes a processor for communication based on one of the selected IEEE 802.11 protocols. Therefore, the examiner respectively disagrees.

The Examiner is referred to Applicant's above argument, that **Lee does not disclose that an AP performs a protocol determination for itself**, and Lee does not disclose or suggest any further detail about the AP, other than how it is being

selected by the wireless station. Therefore, the Examiner's above allegation, that "...without allocating a processor within the access point, the selected AP is not operable with mobile stations because a processor within AP communicates with a processor within mobile or hand-held phone," is both irrelevant and unsupported in Lee's disclosure. The Examiner's remaining arguments are, therefore, moot.

The Applicant maintains that Lee also does not disclose or suggest allocating a processor within said access point, said processor compatible with said determined protocol; and processing said communication signal by said allocated processor within said access point," as recited in Applicant's claim 1.

## **REJECTION UNDER 35 U.S.C. § 102**

### **II. Lee Does Not Anticipate Claims 1, 10-11 and 20-21**

The Applicant now turns to the rejection of claims 1, 10-11 and 20-21 under 35 U.S.C. 102(e) as being anticipated by Lee. With regard to the anticipation rejections under 102(e), MPEP 2131 states that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

Without conceding the Lee qualifies as a 35 U.S.C. § 102(e) prior art reference, the Applicant traverses the rejection as follows.

**A. Rejection of Independent Claims 1, 11 and 21**

With regard to the rejection of independent claim 1 under 102(e), the Applicant submits that Lee does not disclose or suggest at least the limitation of "determining by an access point, a protocol associated with a communication signal for said access point; allocating a processor within said access point, said processor compatible with said determined protocol; and processing said communication signal by said allocated processor within said access point," as recited in Applicant's claim 1.

The Office Action states the following:

"Regarding claim 1, Lee discloses a method for providing communication in a multi-band multi-protocol hybrid wired/wireless network, the method comprising:  
- determining a protocol (selecting one of 802.11 family protocols, see 110-114 fig.1 and ¶29) associated with a communication signal for an access point (AP) (signal associated with AP, see ¶29);  
- allocating a processor within the access point (**inherently allocating/assigning a processor** within the selected AP for communication, see 138 fig.1 and ¶59); and - processing the communication signal by the allocated processor (process the communication signal by the allocated processor within the selected AP, see 138 fig.1 and ¶59).

See the Final Office Action at page 2. The Examiner is referred to Applicant's above arguments in subsection I, namely, **Lee does not disclose that an AP performs a protocol determination for itself**, and Lee does not disclose or suggest any further detail about the AP, other than how it is being selected by the wireless station. On the contrary, Lee ([0057-0059]) discloses that **it is the wireless station** (and not an AP), which performs a matching (the alleged "determining") of one of its 802.11 protocol operating modes (the alleged "protocol associated with a communication signal") to an AP, prior to making a selection to join the AP.

Accordingly, the Applicant maintains that Lee does not disclose or suggest at least the limitation of "determining by an access point, a protocol associated with a communication signal for said access point; allocating a processor within said access point, said processor compatible with said determined protocol; and processing said communication signal by said allocated processor within said access point," as recited in Applicant's claim 1. Applicant's claim 1 is, therefore, allowable.

**B. Traversal of Inherency to Claims 1, 11 and 21**

The Examiner seems to resort to an inherency argument in the Office Action, that Lee discloses the alleged "allocating a processor within the access point". However, the Examiner's inherency argument is deficient at least based on the following reasons.

The Applicant submits that a rejection based on inherency must include a statement of the rationale or evidence tending to show inherency. *See* Manual of Patent Examining Procedure at § 2112. "The fact that a certain result or characteristic may occur or be present in the prior art **is not sufficient to establish the inherency** of that result or characteristic." *See id. citing In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. **Inherency, however, may not be established by probabilities or possibilities.** The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

*In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). The Applicant respectfully submits that neither Lee itself nor the Office Action "make[s] clear that the missing descriptive matter," said to be inherent "is necessarily present in" Lee.

A rejection based on inherency must be based on **factual or technical** reasoning:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.

*Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Applicant respectfully submits that the Office Action does not contain a basis in fact and/or technical reasoning to support the rejection based on inherency. Instead, as recited above, at least claims 1, 11 and 21 of the present application stands rejected based on a conclusory statement of inherency, rather than upon a "basis in fact and/or technical reasoning." Accordingly, the Applicant respectfully submits that, absent a "basis in fact and/or technical reasoning" for the rejection of record, that rejection should be reconsidered and withdrawn. Lee does not overcome the above deficiency of **"allocating a processor within the AP ...compatible to the determined protocol"**.

Therefore, based on the foregoing rationale, the Applicant maintains that Lee does not disclose or suggest at least the limitation of **"allocating a processor within the AP ...compatible to the determined protocol,"** as recited in Applicant's independent claim 1, and there is no anticipation by Lee. The Applicant submits that

claim 1 is allowable, and respectively requests that the rejection to claim 1 under 35 U.S.C. 102(e) be withdrawn.

Independent claims 11 and 21 are similar in many respects to the independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the Lee reference cited in the Office Action at least for the reasons stated above with regard to claim 1.

### **C. Rejection of Dependent Claims 10 and 20**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(e) as being anticipated by Lee has been overcome and request that the rejection be withdrawn. Additionally, claims 10 and 20 depend from independent claims 1 and 11, respectively, and are, consequently, also respectfully submitted to be allowable.

### **REJECTION UNDER 35 U.S.C. § 103**

In order for a prima facie case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

### **III. The Proposed Combination of Lee and Schmidt Does Not Render Claims 2-9 and 12-19 and 23-31 Unpatentable**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(e) as being anticipated by Lee has been overcome and request that the rejection be withdrawn. Schmidt does not overcome Lee's deficiencies. Additionally, claims 2-9 and 12-19 and 22-31 depend directly or indirectly from independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

#### **A. Rejection of Dependent Claims 2, 12 and 22**

The Examiner states the following at page 3 of the Office Action:



"Regarding claim 2, Lee is silent on **"selecting the allocated processor from a pool of available processors for the processing of the communication signal."** However, Schmidt discloses a pool of available processors such as MIPS processor and/or one or more digital signal processors (DSPs) which are configured to operate optimally on specific problems (see col.5, ln.51-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to apply the method of allocating/assigning a specific processor among the processors. The motivation is to operate optimally on specific problem. For example, the bank of DSPs can be optimized to handle discrete cosine transforms (Schmidt, see col.5, lines 59-66), whereas one of the processors can be used to handle other specific operation such as operating for one of the selected IEEE 802.11 protocols."

The Applicant points out that Lee does not disclose any details about an AP, other than the fact that the APs are being selected by the wireless stations. Schmidt does not overcome Lee's deficiencies in claim 1.

In addition, the Examiner has incorrectly equated Schmidt's wireless communication device 100 to Applicant's AP. In this regard, the Schmidt does not disclose or suggest that the bank of DSPs is for use within an AP.

Furthermore, the Applicant refers the Examiner to Applicant's arguments (pages 2-4) in the Pre-Appeal Brief filed on 1/30/09 that Schmidt does not disclose or suggest that the multi-mode wireless communicator device 100 is used in the base station at all. In fact, the contrary is true, that Schmidt consistently discloses that **the multi-mode wireless communicator device 100 is used in only the mobile station**. In this regard, Schmidt also does not overcome Lee's above deficiencies in claim 2. Claim 2 is, therefore, submitted to be allowable. Claims 12

and 22 are rejected under the same rationale as claim 2, are also submitted to be allowable.

**B. Rejection of Dependent Claims 3-7, 13-17 and 23-27**

Claims 3-7, 13-17 and 23-27 are submitted to be allowable based on their dependencies on claims 2, 12 and 22, respectively.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-31.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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